

August 12, 2003

Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors

**D & D Disposal Contract**

All Districts  
(3 votes)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the attached contract with D & D Disposal Inc., for the removal and disposal of animal carcasses from all six Los Angeles County Animal Shelters at a total cost of \$720,000 for five years, from October 1, 2003 through September 30, 2008.
2. Instruct the Chairman to sign the approved contract and return the signed copy to the Department of Animal Care and Control.

**JUSTIFICATION OF RECOMMENDED ACTION:**

This is a sole source contract. D & D Disposal Inc. is the only firm in Southern California that performs large-scale animal carcass removal and disposal work. It has had a long-standing contractual relationship with the Department. The Department does not have the facilities nor the means to dispose of the more than 80,000 animal carcasses handled by the agency every year. D & D Disposal Inc. also has contractual relationships with every other major animal control agency in Southern California and is their sole source provider for animal carcass disposal.

**Implementation of Strategic Plan Goals**

Approval of this contract is consistent with Goal 4 of the Department's Strategic Plan, relating to Fiscal Integrity, and Strategy 3 of that goal section, relating to maintaining and increasing public-private partnerships.

**FISCAL IMPACT:**

The renewal of this contract represents a five-year cost of \$720,000. The cost structure in the contract factors in increases in natural gas and insurance costs. As outlined to our Department, the cost structure would be: \$11,100 per month for the period of October, 2003 through September, 2005. The cost would rise to \$12,000 per month for the period from October, 2005 through September, 2007. In the final year of the agreement, the cost would rise to \$12,850 per month. Approximately 50% of those costs will be passed along to the cities with which our Department has animal service contracts.

**FACTS AND PROVISIONS**

This request is for the renewal of a contract with D & D Disposal, Inc., for the removal and disposal of animal carcasses from the six Los Angeles County animal shelters. The contract has been approved as to form by the Office of the County Counsel.

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This is a sole source contract, as D & D Disposal Inc. is the only firm that disposes of animal carcasses in the Southern California area. The Department does not have the facilities nor the ability to dispose of the more than 80,000 animal carcasses its shelters handle during the course of the average year.

The term of the agreement is for five years, from October 1, 2003 through September 30, 2008. The contract has been agreed to and signed by the president of D & D Disposal, Inc. The total amount of the contract is \$720,000. Approximately half of that amount will be recovered from cities that contract with our Department for animal care and control services.

### **CONTRACTING PROCESS**

This is the renewal of a sole source contract. No bids were solicited from other businesses because there are no other firms that offer these services.

As part of our research into this matter, our Department surveyed 14 animal care and control agencies in Los Angeles, Ventura, Orange, Riverside, Kern and San Diego counties. Without exception, they all have animal carcass disposal contracts with D & D Disposal Inc. D & D Disposal Inc. has been the sole source provider of this service for as long as our records reflect.

Inasmuch as there are no other firms that offer this specialized service, the bid opportunity was not listed on the website of the County Office of Small Business.

### **IMPACT ON CURRENT SERVICES**

Animals that cannot be placed or are not adopted are humanely euthanized. Additionally, our Department is responsible for taking up and removing the carcasses of animals that have been struck by cars or otherwise die on public and private property within our service area. These carcasses must be disposed of and this is a service D & D Disposal has performed for at least the last 30 years.

Respectfully submitted,

Marcia Mayeda  
Director

Attachment

C: Chief Administrative Officer  
County Counsel

**Agreement between**

**Los Angeles County Department of  
Animal Care and Control**

**And**

**D & D Disposal, Inc.**

**Disposal of Animal Carcasses**

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- Exhibit A: County Jury Service Ordinance**
- Exhibit B: Contractor's EEO Certification**
- Exhibit C: County's Administration**
- Exhibit D: Contractor's Administration**

## **AGREEMENT**

### **D & D DISPOSAL INCORPORATED (Disposal of Animal Carcasses)**

This agreement constitutes the complete and exclusive statement of understanding between the County and D & D Disposal Incorporated, (hereinafter, Contractor) which supersedes all previous agreements, written or oral, and all other communication between the parties relating to the subject matter of this agreement.

#### **1. RESPONSIBILITY – CONTRACTOR**

Pursuant to the provisions of this agreement, the Contractor shall provide the County with services set forth in this agreement.

Carcasses to be picked-up five (5) times a week from Animal Care Center 4 as described herein. Carcasses to be picked-up three (3) times a week (preferably Monday, Wednesday and Friday), from two (2) Animal Care Centers, Nos. 1 and 3 as described herein. Animal Care Centers 5, 6, and 7 as described herein require one (1) pick-up per week (preferably Wednesday or Thursday): Forty-eight (48) hours notice of required pick-up will be given by the County to the Contractor.

Contractor is to furnish carcass storage drums to be kept in a clean and sanitary condition when returned to Animal Care Centers.

A test conducted by the Department determined that the average net weight of drums filled to capacity has been 330 pounds.

The approximate number of animal carcasses to be removed annually from each of the Animal Care Centers is as follow:

- A. Animal Care Center No. 1, - Monday through Friday  
11258 S. Garfield Avenue, Downey 90242  
(approximately 30,000 carcasses annually)
- B. Animal Care Center No. 3 - Monday through Friday  
216 W. Victoria Street, Carson 90248  
(approximately 20,000 carcasses annually)
- C. Animal Care Center No. 4 - Monday through Friday  
4275 N. Elton Avenue, Baldwin Park 91706  
(approximately 30,000 carcasses annually)

=2=

- D. Animal Care Center No. 5 - Once per week  
5210 W. Avenue I, Lancaster 93534  
(approximately 18,000 carcasses annually)
- E. Animal Care Center No.6 - Once every 2 weeks  
31044 N. Charlie Canyon Road, Castaic 91384  
(approximately 6,000 carcasses annually)
- F. Animal Care Center No.7 - Once every 2 weeks  
29525 Agoura Road, Agoura 91301  
(approximately 3,000 carcasses annually)

Contractor must have the capacity to remove carcasses of dead livestock upon request by the County from named County Animal Care Centers listed herein.

Contractor must provide the necessary area to conduct necropsies on a variety of animals on a twenty-four (24) hour and seven (7) day a week basis. If informed by a private veterinarian and/or owner that the animal had died from disease and picked up by the Contractor, the vendor is to inform Los Angeles County Public Health Comparative Medical and Veterinary Services immediately.

## **2. CHANGES, AMENDMENTS AND RENEWALS**

The County reserves the right to change any portion of the work required under this Agreement, or amend such other terms and conditions which may become necessary. Any such revisions shall be accomplished in the following manner:

A. For any change which does not affect the scope of work, period performance, payments, included under this Agreement, a Change Notice shall be prepared and signed by the Director of Animal Care and Control and Contractor.

B. For any revision which affects the scope of work, period of performance or payments, a negotiated Modification to the Agreement shall be executed by the Board of Supervisors of the County and the Contractor.

C. To the extent that extensions of time for Contractor performance do not impact either the scope of work or cost of this Agreement, the Director of Animal Care and Control, in his or her sole discretion, may grant the Contractor extensions of time provided, however, that the aggregate of all such extensions shall not exceed sixty (60) days.



### **3. PERIOD OF PERFORMANCE**

The period of Performance under this Agreement shall commence October 1, 2003, and shall be completed on September 30, 2008, if not sooner terminated as provided herein.

### **4. CONTRACT SUM**

The Contract Sum under the terms of this Agreement shall be the monetary amount payable by the County to the Contractor for services specified under this Agreement. In the contract from October 1, 2003 to September 30, 2008, the sum shall be Seven Hundred Twenty thousand Dollars (\$720,000).

The pick-up of livestock carcasses shall be at the established rate of One Hundred Dollars (\$100) per animal from the following Animal Care Centers: No.1 (Downey), No.3 (Carson) and No.4 (Baldwin Park); One Hundred Fifty Dollars (\$150) per animal from Animal Care Centers No. 6 (Castaic) and No. 7 (Agoura); and Two Hundred Dollars (\$200) per animal from Animal Care Center No. 5 (Lancaster).

The cost of the livestock carcasses shall remain at the stated amount above during the term of this contract. Contractor agrees to satisfactorily perform and complete all work specified and funded herein.

### **5. INVOICES AND PAYMENTS**

A. The Contractor shall invoice the County monthly for work performed and for services specified herein. The Contractor shall prepare invoices, which shall include the total service fee and any other charges owed to Contractor by County under the terms of this agreement.

B. The County shall not withhold payment and shall use its best efforts to promptly pay all properly submitted invoices.

C. All invoices under this agreement shall be submitted to the Department of Animal Care and Control, 5898 Cherry Avenue, Long Beach, CA 90805.

## **6. INDEPENDENT CONTRACTOR STATUS**

- A. This contract is by and between the County and the Contractor and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be or be construed to be the employees or agents of the other party for any purpose whatsoever.
- B. The Contractor shall be solely liable and responsible for providing to, on or behalf of, all persons performing work pursuant to this Contract, all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.
- C. The Contractor understand and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation payments for any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

## **7. INDEMNIFICATION**

The Contractor shall indemnify, defend, and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including, but not limited to, demands, claims, actions, fees, costs, and expenses (including attorney and witness fees) arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Contract.

## **8. GENERAL INSURANCE REQUIREMENTS**

Without limiting the Contractor's indemnification of the County and during the term of this contract, the Contractor shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County. Such coverage shall be provided and maintained at the Contractor's own expense.

A. EVIDENCE OF INSURANCE: Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to the Los Angeles County Department of Animal Care and Control, 5898 Cherry Avenue, Long Beach, CA 90805 prior to commencing services under this contract. Such certificates or other evidence shall:

- Specifically identify this Contract;
- Clearly evidence all coverages required in this Contract;
- Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
- Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Contract, and;
- Identify any deductions or self-insured retentions for the County's approval. The County retains the right to require the Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to the County or require the Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including but not limited to, expenses or fees or both related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

B. INSURER FINANCIAL RATINGS: Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII unless otherwise approved by the County.

C. FAILURE TO MAINTAIN COVERAGE: Failure by the Contractor to maintain the required insurance, or to provide evidence of insurance acceptable to the County shall constitute a material breach of the Contract upon which the County may immediately terminate or suspend this Contract. The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage and, without further notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance.

D. NOTIFICATION OF INCIDENTS, CLAIMS, OR SUITS:

Contractor shall report to the County:

- Any accident or incident relating to services performed under this Contract which involves injury or property damage which may result in the filing of a claim or lawsuit against the Contractor and/or the County. Such report shall be made in writing within 24 hours of any occurrence.

- Any third-party claim or lawsuit filed against the Contractor arising from or related to the services performed by the Contractor under this Contract.

- Any injury to a Contractor employee that occurs on the County property. This report shall be submitted on a County "Non-Employee Injury Report" to the County Contract Manager.

- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever or County property, monies, or securities entrusted to the Contractor under the terms of this Contract.

E. COMPENSATION FOR COUNTY COSTS: In the event that the Contractor fails to comply with any of the indemnification or insurance requirements of this Contract, and such failure to comply results in any costs to the County, the Contractor shall pay full compensation for all costs incurred by the County.

F. INSURANCE COVERAGE REQUIREMENTS FOR SUBCONTRACTORS: The Contractor shall ensure that any and all subcontractors performing services under this Contract meet the insurance requirements of this Contract by either:

- The Contractor providing evidence of insurance covering the activities of subcontractors, or

- The Contractor providing evidence submitted by subcontractors evidencing that the subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

G. **INSURANCE COVERAGE REQUIREMENTS:** The Contractor shall be required to maintain insurance coverage of these types and coverage amounts:

- General Liability insurance, written on ISO policy form CG 00 01 or its equivalent, with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

- Automobile Liability written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned," "hired," and "non-owned" vehicles, or coverage for "any auto."

- Workers' Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which the Contractor is responsible. If the Contractor's employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the Contractor is responsible. In all cases, the above insurance also shall include Employers' Liability Coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease – policy limit:	\$1 million
Disease – each employee:	\$1 million

## **9. COMPLIANCE WITH LAWS**

A. The Contractor shall comply with all applicable Federal, State and Local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

B. The Contractor shall indemnify and hold harmless the County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees. Arising from or related to any violation on the part of the Contractor or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

## **10. COMPLIANCE WITH CIVIL RIGHTS LAWS**

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000(e)(1) through 2000(e)(17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

## **11. COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **A. Jury Service Program:**

This Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit A and incorporated by reference into and made a part of this Contract.

### **B. Written Employee Jury Service Policy.**

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this Sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the County under the Agreement, the subcontractor shall also be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

3. If Contractor is not required to comply with the Jury Service Program when the Agreement commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.

4. Contractor's violation of this Sub-paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

**13. CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set for herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified former County employees who are on a re-employment list during the life of this contract.

**13. CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

Should the Contractor require additional or replacement personnel after the effective date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor. In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

**14. CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT**

The Contractor acknowledges that the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at the Contractor's place of business. The County Child Support Services Department will supply the Contractor with the poster to be used.

**15. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Purchase Order or contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.



As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Agreement to comply with all applicable provisions of laws, the Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**16. CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be posted.

**17. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**18. COUNTY'S QUALITY ASSURANCE PLAN**

The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

**19. DAMAGE TO COUNTY FACILITIES, BUILDINGS, OR GROUNDS**

The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. All costs incurred by the County, as determined by the County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

**20. EMPLOYMENT ELIGIBILITY VERIFICATION**

The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**21. FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Change Notices and Amendments prepared pursuant to Paragraph 2, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

## **22. FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

## **23. GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

## **24. MOST FAVORED PUBLIC ENTITY**

If the Contractor's prices decline, or should the Contractor at any time during the term of this Agreement provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Agreement, then such lower prices shall be immediately extended to the County.

## **25. NONDISCRIMINATION AND AFFIRMATIVE ACTION**

The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

The Contractor's EEO Certification is attached to this agreement as Exhibit B.

The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, or physical or mental disability, marital status, or political affiliation.

The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 25 when so requested by the County.

If the County finds that any provisions of this Paragraph 25 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Agreement.

The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

## **26. NOTICE OF DELAYS**

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) day, give notice thereof, including all relevant information with respect thereto, to the other party.

## **27. NOTICES**

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits C, County's Administration and D, Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Director of Department of Animal Care and Control shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

## **28. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

## **29. RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

## **30. CONTRACTOR'S RESPONSIBILITY AND DEBARMENT**

Responsible Contractor: A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Contract. It is the County's policy to conduct business only with responsible contractors.

- Chapter 2.202 of the Los Angeles County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the Los Angeles County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding on County contracts for a specified period of time, not to exceed three (3) years, and terminate any or all existing contracts the Contractor may have with the County.

- Non-responsible Contractor

The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the contractor has done any of the following:

(1) Violated any term of a contract with the County.

(2) Committed any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same.

(3) Committed any act or offense which indicates a lack of business integrity or business honesty, or

(4) Made or submitted a false claim against the County or any other public entity.

- Contractor Hearing Board

If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence that is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and, or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred and, if so, the appropriate length of time of the debarment. If the Contractor fails to avail himself or herself of the opportunity to submit evidence to the Contractor Hearing Board, the Contractor may be deemed to have waived all rights of appeal.

A record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

These terms shall also apply to any subcontractors of County contractors.

### **31. FEDERAL RESTRICTIONS ON LOBBYING**

The Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 United States Code, Section 1352) and any implementing regulations, and shall be responsible for insuring that all sub-contractors under the Contract shall also fully comply with all such certification and disclosure requirements.

### **32. CONTRACTOR'S EXCLUSION FROM PARTICIPATION IN A FEDERALLY FUNDED PROGRAM**

The Contractor hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program unfunded by the United States government, directly or indirectly, in whole or in part, and that the Contractor will notify the Department within thirty (30) calendar days in writing of:

(1) Any event that would require the Contractor or a staff members mandatory exclusion from participation in a federally funded health program, and

(2) Any exclusionary action taken by any agency of the Federal government against the Contractor or one of more staff members barring it or the staff members from participatioOn in a federally funded health program, whether such bare is direct or indirect, or whether such bar is in whole or in part.

The Contractor shall indemnify and hold the County harmless against any and all lost or damage the County may suffer arising from any Federal exclusion of the Contractor or its staff members from such participation in a federally funded health care program.

The failure by the Contractor to meet the requirements on this Contract provision shall constitute a material breach of contract upon which the County may immediately terminate or suspend the Agreement.

### **33. PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

### **34. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN CHILD SUPPORT COMPLIANCE**

Failure of the Contractor to maintain compliance with the requirements set forth in Paragraph 15 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute a default by the Contractor under this Agreement. Without limiting the rights and remedies available to the County under any other provision of this Agreement, failure to cure such default within 90 days of notice by the Los Angeles County Child Support Services Department shall be grounds upon which the Board of Supervisors may terminate this Agreement pursuant to Paragraph 36 - Termination for Default.

### **35. TERMINATION FOR CONVENIENCE**

This Agreement may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.



### **36. TERMINATION FOR DEFAULT**

The County may, by written notice to the Contractor, terminate the whole or any part of this Agreement in any one of the following circumstances:

- If the Contractor fails to perform the services specified herein or;
- If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its term and, in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the County may authorize in writing) after receipt of notice from the County specifying such failure

In the event that the County terminates this Agreement in whole or in part as provided above, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this sub-paragraph.

Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in above paragraph if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

If, after the County has given notice of termination under the provisions of this Paragraph 36 it is determined by the County that the Contractor was not in default under the provisions of this Paragraph 36, or that the default was excusable under the provisions of Paragraph 36, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 25 - Termination for Convenience.

In the event the County terminates this Agreement in its entirety due to the Contractor's default as provided in Paragraph 36, the Contractor and the County agree that the County will have actual damages, which are extremely difficult to calculate and impracticable to fix and which will include, but are not limited to, the County's costs of procurement of replacement services and costs incurred due to delays in procuring such services. Therefore, the Contractor and the County agree that the County shall, at its sole option and in lieu of the provisions of Paragraph 36, be entitled to liquidated damages from the Contractor, pursuant to California Civil Code Section 1671, in the amount of Five Thousand Dollars (\$5,000) or five percent (5%) of the applicable year's Contract sum, whichever is less, as equitable compensation to the County for such actual damages. This amount of liquidated damages shall be either paid by the Contractor to the County by cash payment upon demand or, at the sole discretion of the Department of Animal Care and Control, or designee, deducted from any amounts due to the Contractor by the County, whether under this Agreement or otherwise.

These liquidated damages shall be in addition to any credits, which the County is otherwise entitled to under this Agreement, and the Contractor's payment of these liquidated damages shall not in any way change, or affect the provisions of Paragraph 7 – Indemnification.

The rights and remedies of the County provided in this Paragraph 36 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

### **37. TERMINATION FOR IMPROPER CONSIDERATION**

The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

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The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

### **38. TERMINATION FOR INSOLVENCY**

The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

The rights and remedies of the County provided in this Paragraph 38 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **39. TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

#### **40. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Agreement, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

#### **41. LIQUIDATED DAMAGES**

All time limits and required actions to be done by both parties are the essence of this agreement. If the Contractor fails to perform or complete the required work at the times set forth herein, then it is mutually understood and agreed that the nature of the resultant damages will be extremely difficult and impractical to fix. The County and the Contractor have endeavored to fix the amount of said damages in advance; such that the amount of set forth hereinafter are the nearest and most exact measures of damages for such breach that can be fixed at or after such breach; and that, therefore, the County and the Contractor hereby fix the liquidated damages set forth hereinafter, not as a penalty or forfeiture for breach of this Agreement.

#### **42. VALIDITY**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **43. WAIVER**

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**44. WARRANTY AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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IN WITNESS WHEREOF, Contractor has executed this Agreement, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

CONTRACTOR:

D & D DISPOSAL, INCORPORATED

By \_\_\_\_\_  
Name

\_\_\_\_\_  
Title

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk  
of the Board of Supervisors

By \_\_\_\_\_

APPROVED AS TO FORM:

Lloyd W. Pellman  
County Counsel

By \_\_\_\_\_  
Principal Deputy County Counsel

